

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CASE NO. C17-0178JLR

(RELATING TO BOTH CASES)

JEWISH FAMILY SERVICE of
SEATTLE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CASE NO. C17-1707JLR

~~PROPOSED~~ STIPULATED ORDER PURSUANT TO FEDERAL RULE OF
EVIDENCE 502(d)

The Court hereby orders pursuant to Rule 502(d) of the Federal Rules of Evidence that the procedure set forth in this Stipulation shall be used in the event of an inadvertent production of a document during this litigation. Inadvertent production of a document, or part of a document, shall not constitute a waiver of any privilege or protection as to any portion of that document, or as to any undisclosed privileged or protected communications or information concerning the same

1 subject matter, in this or in any other proceeding. This Order applies to attorney-client privilege
2 and work-product protections, as well as all other protections afforded by Federal Rule of Civil
3 Procedure 26(b) and governmental privileges. Nothing in this Order shall constitute an admission
4 that any document disclosed in this litigation is subject to any of the foregoing privileges or
5 protections, or that any party is entitled to raise or assert such privileges. Additionally, nothing
6 in this Order shall prohibit parties from withholding from production any document covered by
7 any applicable privilege or other protection. Nothing in this Order shall limit a party's right to
8 conduct a pre-production review of documents as it deems appropriate.

9 **I. DEFINITIONS**

- 10 1. "Document," as used herein, includes all items listed in Fed. R. Civ. P.
11 34(a)(1)(A) and (B).
12 2. "Documents Produced," as used herein, includes all documents made available
13 for review or produced in any manner during this litigation.

14 **II. PROCEDURES**

15 The procedures applicable to a claim of privilege on a produced document and the
16 resolution thereof shall be as follows:

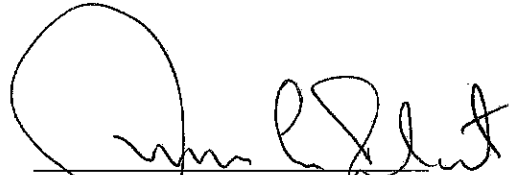
- 17 1. If a party discovers a document, or part thereof, produced by another party that it
18 knows to be privileged or otherwise protected, the receiving party shall promptly
19 notify the producing party and must then return the document or destroy it and
20 certify that it has been destroyed to the producing party. Nothing in this Order is
21 intended to shift the burden to identify privileged and protected documents from
22 the producing party to the receiving party.
23 2. If the producing party determines that a document produced, or part thereof, is
24 subject to a privilege or privileges, the producing party shall promptly give the
25 receiving party notice of the claim of privilege ("privilege notice").
26

- 1 3. The privilege notice must contain information sufficient to identify the document
2 including, if applicable, a Bates number as well as identification of the privilege
3 asserted and its basis.
- 4 4. Upon receiving the privilege notice, if the receiving party agrees with the
5 privilege assertion made, the receiving party must promptly return the specified
6 document(s) and any copies or destroy the document(s) and copies and certify to
7 the producing party that the document(s) and copies have been destroyed. The
8 receiving party must sequester and destroy any notes taken about the document.
9 If a receiving party disclosed the document or information specified in the notice
10 before receiving the notice, it must take reasonable steps to retrieve it, and so
11 notify the producing party of the disclosure and its efforts to retrieve the
12 document or information.
- 13 5. Upon receiving the privilege notice, if the receiving party wishes to dispute a
14 producing party's privilege notice, the receiving party shall promptly meet and
15 confer with the producing party. The document(s) shall be sequestered and not
16 be used by the receiving party in the litigation (*e.g.*, filed as an exhibit to a
17 pleading or used in deposition) while the dispute is pending. If the parties are
18 unable to reach an agreement about the privilege assertions made in the privilege
19 notice, the receiving party may make a sealed motion for a judicial determination
20 of the privilege claim.
- 21 6. Pending resolution of the judicial determination, the parties shall both preserve
22 and refrain from using the challenged information for any purpose and shall not
23 disclose it to any person other than those required by law to be served with a
24 copy of the sealed motion. The receiving party's motion challenging the
25 assertion must not publicly disclose the information claimed to be privileged.
26 Any further briefing by any party shall also not publicly disclose the information

1 claimed to be privileged if the privilege claim remains unresolved or is resolved.
2 in the producing party's favor.

3 **IT IS SO ORDERED**

4 DATED this 4th day of ~~August~~^{September}, 2018.

5
6 
7 JAMES L. ROBART
8 UNITED STATES DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:

s/ Deepa Alagesan

Deepa Alagesan, *Pro Hac Vice*
Mariko Hirose, *Pro Hac Vice*
Linda Evarts, *Pro Hac Vice*
Kathryn C. Meyer, *Pro Hac Vice*
International Refugee Assistance Project
40 Rector Street, 9th Floor
New York, NY 10006
Tel: (646) 459-3044
mhirose@refugeerights.org
dalagesan@refugeerights.org
levarts@refugeerights.org
kmeyer@refugeerights.org

David Burman, WSBA No. 10611
Lauren Watts Staniar, WSBA No. 48741
Tyler Roberts, WSBA No. 52688
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000
dburman@perkinscoie.com
lstaniar@perkinscoie.com
troberts@perkinscoie.com

Elizabeth Sweet, *Pro Hac Vice*
Mark Hetfield, *Pro Hac Vice*
HIAS, Inc.
1300 Spring Street, Suite 500
Silver Spring, MD 20910
Tel: 301-844-7300
liz.sweet@hias.org
mark.hetfield@hias.org

Justin B. Cox, *Pro Hac Vice*
National Immigration Law Center
PO Box 170208
Atlanta, GA 30317
Tel: (678) 279-5441
Fax: (213) 639-3911
cox@nilc.org

Karen C. Tumlin, *Pro Hac Vice*
Melissa S. Keaney, *Pro Hac Vice*
Esther H. Sung, *Pro Hac Vice*
National Immigration Law Center
3450 Wilshire Blvd, #108-62
Los Angeles, CA 90010
Tel: (213) 639-3900
Fax: (213) 639-3911
tumlin@nilc.org
keaney@nilc.org
sung@nilc.org

Lauren E. Aguiar, *Pro Hac Vice*
Mollie M. Kornreich, *Pro Hac Vice*
Abigail E. Davis, *Pro Hac Vice*
Four Times Square
New York, NY 10036
Tel: (212) 735-3000
Fax: (212) 735-2000
lauren.aguiar@probonolaw.com
mollie.kornreich@probonolaw.com
abigail.sheehan@probonolaw.com

*Counsel for Plaintiffs Jewish Family Service,
et al.*

AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON FOUNDATION

By: /s/ Emily Chiang
/s/ Lisa Nowlin
Emily Chiang, WSBA # 50517
Lisa Nowlin, WSBA # 51512
901 Fifth Avenue, Suite 630
Seattle, WA 98164
Telephone: (206) 624-2184
Email: echiang@aclu-wa.org
lnowlin@aclu-wa.org

Counsel for Plaintiffs Doe, et al.

KELLER ROHRBACK L.L.P.

By: /s/ Lynn Lincoln Sarko
By: /s/ Tana Lin
By: /s/ Amy Williams-Derry
By: /s/ Derek W. Loeser
By: /s/ Alison S. Gaffney
Lynn Lincoln Sarko, WSBA # 16569
Tana Lin, WSBA # 35271
Amy Williams-Derry, WSBA # 28711
Derek W. Loeser, WSBA # 24274
Alison S. Gaffney, WSBA # 45565
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384
Email: lsarko@kellerrohrback.com
tlin@kellerrohrback.com
awilliams-derry@kellerrohrback.com
dloeser@kellerrohrback.com
agaffney@kellerrohrback.com

By: /s/ Laurie B. Ashton
Laurie B. Ashton (admitted pro hac vice)
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012-2600
Telephone: (602) 248-0088
Facsimile: (602) 248-2822
Email: lashton@kellerrohrback.com

By: /s/ Alison Chase
Alison Chase (admitted pro hac vice)
1129 State Street, Suite 8
Santa Barbara, CA 93101
Telephone: (805) 456-1496
Facsimile: (805) 456-1497
Email: achase@kellerrohrback.com

*Attorneys for Plaintiffs Doe, et al./Cooperating
Attorneys for the American Civil Liberties
Union Of Washington Foundation*

1 CHAD A. READLER

Acting Assistant Attorney General

2 AUGUST E. FLENTJE

3 Special Counsel

4 JENNIFER D. RICKETTS

5 Director, Federal Programs Branch

6 JOHN R. TYLER

Assistant Director, Federal Programs Branch

7 /s/ Joseph C. Dugan

8 MICHELLE R. BENNETT

DANIEL SCHWEI

9 DANIEL BENSING

KEVIN SNELL

10 JOSEPH C. DUGAN

Senior Trial Counsel / Trial Attorneys

11 U.S. Department of Justice

Civil Division, Federal Programs Branch

12 20 Massachusetts Avenue, NW

Washington, DC 20530

13 Tel: (202) 514-3259

Fax: (202) 616-8470

14 Email: Joseph.Dugan@usdoj.gov

15 *Counsel for Defendants*

CERTIFICATE OF SERVICE

I certify that on August 31, 2018, a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

DATED this 31st of August, 2018.

/s/ Joseph C. Dugan
JOSEPH C. DUGAN